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Maine State Legislature

Office of Policy and Legal Analysis

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OPLA~Notes

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December 2001

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for the Maine State Legislature*

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III

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The Maine Education Policy Research Institute

Troubled by the lack of useful data with which to craft educational policies, the 117th Legislature established the Maine Education Policy Research Institute (the "Institute") in 1995. The Legislature created the Institute during a period when state officials were contemplating significant reforms to K-12 education. The Institute was envisioned as a partnership -- between the Legislature, the Department of Education, the University of Maine System and other educational stakeholders -- to collect and analyze data that would be beneficial to Legislators and other state or local officials engaged in educational policymaking.

Funding for the non-partisan Institute is shared between the Legislative Council and the University of Maine System. Since making an initial appropriation of \$75,000 to match University of Maine System funds in 1995, the Legislature has annually appropriated funds to the Legislative Council budget for the purpose of contracting for educational research with faculty members located at the respective Colleges of Education at the University of Maine and the University of Southern Maine. During the past few years, the Legislative Council and the University of Maine System have each provided \$150,000 annually, with \$75,000 of the state share set aside for longitudinal research and \$75,000 for targeted research projects.

The governance structure of the Institute was established by statute (please see Title 20-A, §10). The Legislature's Education and Cultural Affairs Committee makes appointments to an eight-member "steering committee," which includes representatives of the following entities: the Legislature's Education Committee, the Department

Newsletter Greetings

Welcome to this edition of OPLA~Notes. This edition includes an article that provides an overview of the Maine Education Policy Research Institute, including the Institute's purpose, funding, governance and research products. This edition of the newsletter also includes an article on the Maine and New Hampshire Boundary dispute, as well as useful websites and a listing of interim legislative studies and report dates.

of Education, the State Board of Education, the University of Maine System, the Maine School Management Association, the Maine Education Association, the Maine Municipal Association and the Maine Principals' Association. Legislative oversight is also provided and carried out through an annual project agreement between the Legislature and the University of Maine System. The Executive Director of the Legislative Council executes the agreement on behalf of the Legislative Council. The research products to be delivered to the Legislature are specified in an annual work plan developed by the Institute's Steering Committee in consultation with the Education Committee. The Office of Policy & Legal Analysis provides non-partisan staffing assistance to the Institute's Steering Committee.

During its first five years of existence, the Institute has provided an annual "snapshot" of quantitative and qualitative data to Legislators and other state policymakers through the publication of two annual reports: "*The Condition of K-12 Public Education in Maine*" and the "*Legislative District Education Reports*." These reports provide useful facts and statistics that can be used to measure the effectiveness of the K-12 public education system in Maine and how it is changing over time. Taken together, the financial, demographic and educational data included in these reports have provided Legislators with insights into both the state-level perspective of the K-12 education system and the local-level perspectives of the school administrative units organized within their legislative districts.

In addition to the long-term research described above, the Institute also conducts "targeted" research on selected education issues as requested by the Legislature. Over the past five years, the Institute has provided 46 targeted research reports. A sampling of the targeted projects completed for the Legislature include research reports on: school finance reform, assessing student performance, educator shortages, barriers to postsecondary education aspiration, the financial and resource impacts of implementing the system of learning results, the characteristics of high and low performing schools and the financial impact of transitioning to a school funding formula based on the essential programs and services model, including analyses of costs associated with providing transportation, vocational education, special education and early childhood education in Maine public schools.

The Office of Policy & Legal Analysis distributes copies of research reports to Legislators during the legislative session. The research reports published by the Education Research Institute are maintained at the University

of Maine System. The current Institute Co-directors are Professor David Silvernail, University of Southern Maine and Professor Walter Harris, University of Maine. Phil McCarthy, Legislative Analyst at the Office of Policy & Legal Analysis, currently provides staffing assistance to the Institute's Steering Committee. To learn more about the research produced by the Institute, please contact one of the Institute's Co-directors or visit their web pages at the University of Southern Maine (please see www.usm.maine.edu/cepare/) or at the University of Maine (please see www.ume.maine.edu/cofed/research/policyres.htm).

Did You Know?



Skowhegan native, Margaret Chase Smith was the first woman ever elected to the U. S. Senate (1948) and the first woman to serve in both houses of Congress. She said, "My creed is that public service must be more than doing a job efficiently and honestly. It must be a complete dedication to the people and to the nation with full recognition that every human being is entitled to courtesy and consideration, that constructive criticism is not only to be expected but sought, that smears are not only to be expected but fought, that honor is to be earned but not bought."



In the spring and summer, Maine has hundreds of species of shorebirds, seabirds, songbirds and raptors. In the fall, many northern birds stop to rest and feed in Maine on their migration south. Maine is the only state on the East Coast where Atlantic Puffins breed regularly. Adult puffins come ashore in April or May to raise one chick and are gone around mid-August until next year.

Recent Legal Issues



U.S. Supreme Court Rules on Boundary Dispute Between Maine and New Hampshire: State of New Hampshire vs. State of Maine (121 S. Ct. 1808)

On May 29, 2001, the United States Supreme Court granted Maine's motion to dismiss New Hampshire's petition to establish the Maine-New Hampshire border along the Piscataqua River at the Maine shoreline. That motion would have placed Seavey Island, home to the Portsmouth Naval Yard, and the entire Portsmouth harbor within the state of New Hampshire.

This is the second court challenge by New Hampshire involving the location of the Maine-New Hampshire border. In the 1970's, Maine and New Hampshire engaged in litigation over the Maine-New Hampshire marine boundary in the context of lobster fishing rights. In 1977, the United States Supreme Court entered a consent decree (a court order that all parties agree to), fixing the location of the marine boundary between Maine and New Hampshire from the "closing line of Portsmouth Harbor five miles seaward to Gosport Harbor in the Isles of Shoals." New Hampshire v. Maine, 426 U.S. 363. In summarizing the history of the boundary between the states in its May decision, the Court stated that the boundary in the Piscataqua River "was in fact fixed in 1740 by decree of King George II of England" as follows: "That the Dividing Line shall pass up thro the Mouth of Piscataqua Harbor and up the Middle of the River ... And that the Dividing Line shall part the Isles of Shoals and run thro the Middle of the Harbor between the Islands to the Sea on the Southerly Side" New Hampshire v. Maine, 121 S.Ct. 1801, 1813 (quoting the 1740 decree). Both Maine and New Hampshire agreed in the 1977 consent decree that the term "Middle of the River" referred to in the 1740 decree meant the middle of the Piscataqua River's main channel of navigation.

In the case decided this year, New Hampshire asserted that the "Middle of the River" as used in the 1740 decree, refers to the main branch of the river and not a mid-channel boundary as defined in the 1977 consent decree.

New Hampshire also argued that its ownership over the river was evidenced by the fact that it had exercised exclusive jurisdiction over shipping and military activities in Portsmouth Harbor for decades both before and after the 1740 decree was issued. New Hampshire v. Maine, 121 S. Ct. at 1813. In its motion to dismiss, Maine countered New Hampshire's historical interpretations and argued that both the 1740 decree and the 1977 consent judgment divided the Piscataqua River at the center of the main channel of navigation, placing Seavey Island within Maine's jurisdiction.

In granting Maine's motion to dismiss New Hampshire's action, the Court held that the 1977 consent decree barred New Hampshire from asserting that the Piscataqua River boundary ran along Maine's shore under the doctrine of judicial estoppel. In general, judicial estoppel is a legal doctrine that prevents a party from prevailing in one phase of a case on an argument and then relying on a contradictory argument to prevail in another phase. The Court found that New Hampshire "having convinced this Court to accept one interpretation of the 'Middle of the River' [in the 1977 consent decree], and having benefited from that interpretation, ... [could not argue] an inconsistent interpretation to gain an additional advantage at Maine's expense." Id. at 1817.

In its legal arguments, New Hampshire pointed out that the Court has consistently ruled that the doctrine of estoppel does not ordinarily apply to states and accordingly, the Court should not allow the doctrine to act as a bar in this case. In rejecting New Hampshire's argument, the Court explained that "When the Government is unable to enforce the law because the conduct of its agents has given rise to estoppel, the interests of the citizenry as a whole in obedience to the rule of law is undermined. It is for this reason that it is well settled that the Government may not be estopped on the same terms as any other litigant." Id. at 1817 (quoting United States v. Owens, 54 F.3d 271, 275 (C.A. 6 1995)). In this case, New Hampshire was not trying to enforce its own laws within its borders, but attempting to set the border itself which did not give rise to the same set concerns that provided the rational for the Court's prior rulings on estoppel as it is applied to states. Finally, New Hampshire argued that it should not be estopped from asserting a new definition of "Middle of the River" because it did not do a "searching historical inquiry" into what the "Middle of the River" meant before entering into the 1977 consent decree. The Court refused to accept New Hampshire's claim of inadvertence and found that while the doctrine of estoppel may not be applied "when a party's prior position was based on inadvertence or mistake," New Hampshire was aware or should been aware, of the historical meaning of

the "Middle of the River" when it entered into the 1977 consent decree. New Hampshire v. Maine, 121 S.Ct. 1801, 1817 (2001)

On August 6, 2001, the United State Supreme Court denied New Hampshire's petition for a rehearing of this case putting the issue to rest. New Hampshire v. Maine, 122 S. Ct. 70.

As a result of the Court's decision, Maine will now begin to pursue individual taxpayer cases against New Hampshire residents who are former or current employees of the Portsmouth Naval Yard.

Internet Intersection

Policy and Government



The Federal Web Locator: The Federal Web Locator is a service provided by the Center for Information Law and Policy at Chicago-Kent College of Illinois Institute of Technology. The site has a comprehensive set of links to federal agencies, quasi-official agencies, boards, commissions and committees as well as non-government federally related sites.

www.infoctr.edu/fwl/

Public Agenda Online: This website is a nonpartisan, nonprofit public opinion research and citizen education organization. It has a two-fold mission: 1) to help public officials and leaders understand the public point of view on major policy issues and 2) to help citizens understand critical policy issues.

www.publicagenda.org

Law and Legislative Reference Library: Provides access to the URSUS catalog, collections information, reference information, legislative history instructions and interlibrary loan information and lists of Justices for the Maine Supreme Judicial Court and Maine Attorney Generals. The Library's website also includes an in-house index to NCSL Legisbrief, a two-page issue brief published by the National Conference of State Legislatures (NCSL). The website also offers the submittal of research requests via e-mail and provides information of the library's move during renovations of the State-

House.

www.state.me.us/legis/lawlib

Technology



SmartLinks.org: This website provides access to categorized search engines, directories telephone numbers, address locators and maps.

www.SmartLinks.org

Reference



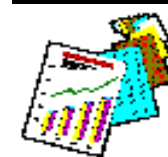
Fast Facts: Fast Facts is an extensive collection of almanacs, fact books, statistical reports and related reference tools. It provides a quick guide to many common and not-so-common information resources.

gwu.edu/~gprice/handbook.htm

Refdesk: This website indexes the Internet 'library' by providing three levels of information: quick-with a thumbnail description, studied-with a more extensive approach, and deep-with an in-depth exploration. The site includes a list of links for news, facts, reference tools, subject categories and help and advice sites.

www.refdesk.com/

General Interest



HandiLinks: The Handilinks directory, index and search engines help users find information, products and services. The website has categorized over two million sites into 55 categories with over 200,000 subcategory topics. Handilinks also provides American Sign Language (ASL) graphics and hypertext links to education material throughout the directory.

www.handilinks.com/index.htm

Metagrid: This website provides a newspaper and magazine database for the Internet. There are links to on-line newspapers and magazines from around the

world.

www.metagrid.com/

Legislative Studies During the Interim

The following is a listing of legislative studies that were authorized to be conducted during the interim between the 120th Legislature's First Regular Session and Second Regular Session. For more information on a particular study, please contact OPLA at 287-1670 or OFPR at 287-1635.

Study	Reporting Date
Blue Ribbon Commission on Postsecondary Educational Attainment	December 5, 2001
Commission to Recognize Veterans of the Vietnam War in the State House Hall of Flags (continuation)	December 1, 2001
Commission to Review the Child Protective System	December 19, 2001
Committee to Study Access to Public and Private Lands	December 19, 2001
Commission to Study Assisted Living	December 5, 2001
Commission to Study the Benefits and Costs for Increasing Access to Family and Medical Leave for Maine Families	December 5, 2001
Commission to Study Domestic Violence (continuation)	December 5, 2001
Commission to Study Equity in the Distribution of Gas Tax Revenues Attributable to Snowmobiles, All-terrain Vehicles and Watercraft	December 5, 2001
Commission to Study the Implementation of a Unified Emergency Response for Emergency Releases and Spills of Toxic or Hazardous Materials	December 19, 2001
Commission to Study Is-	December 19, 2001

Commission to Study the Needs of Persons with Mental Illness Who Are Incarcerated	December 19, 2001

Study	Reporting Date
Commission to Study Needs and Opportunities Associated with the Production of Salmonid Sport Fish in Maine (continuation)	December 1, 2001
Commission to Study Reimbursement Rates for Maine's Bottle Redemption Businesses and Other Issues Related to the Handling and Collection of Returnable Containers	December 5, 2001
Committee Study to Review Transition to a New School Funding Formula Based on the Essential Programs and Services Model	January 15, 2002
MCJUSTIS Board (continuation)	December 15, 2001, and December 15, 2002
Legislative Youth Advisory Council	February 15, 2003
Committee to Study the Loss of Commercial Fishing, Waterfront Access and Other Economic Development Issues Affecting Commercial Fishing	December 14, 2001
Round Table to Study Economic and Labor Issues Relating to the Forest Products Industry (continuation)	December 5, 2001
Commission to Develop a Plan to Implement the Closure of State Liquor Stores	January 31, 2002
Recodification of Title 12, Inland Fisheries and Wildlife Laws (staff study)	January 15, 2002
Committee to Study Growth Management	December 19, 2001
Maine Millennium Com-	December 5, 2001

mission on Hunger and Food Security (continuation)	
Joint Review of Tax Expenditure Review Process	October 1, 2001
Education Funding Reform Committee	December 31, 2001

Study	Reporting Date
Advisory Committee to the Department of Administrative and Financial Services Regarding the Worker's Compensation System	December 15, 2001



OPLA Publications

Study Reports - A listing of study reports of legislative committees and commissions categorized by year beginning in 1973 is available from OPLA. For printed copies of any of these reports, please contact the Office of Policy and Legal Analysis. The first copy of a report is free; additional copies are available at a nominal cost. In addition, many of the recent legislative studies staffed by OPLA are available on the OPLA website at the following address:

<http://www.state.me.us/legis/opla/reports2.htm>

A Word About OPLA

The Office of Policy and Legal Analysis (OPLA) is one of several nonpartisan offices of the Maine State Legislature. It operates under the auspices of the Legislative Council. The office provides professional staff assistance to the joint standing and select committees and study commissions, including providing policy and legal research and analysis, coordinating the committee process, drafting bills and amendments, analyzing budget bills in cooperation with the Office of Fiscal and Program Review and preparing legislative proposals, reports and recommendations.

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We welcome your comments and suggestions.

Contact the Office of Policy and Legal Analysis by writing to 13 State House Station, Augusta, Maine 04333; calling 287-1670; or stopping by Room 215 of the Cross Office Building. The newsletter is available on the Internet at: www.state.me.us/legis/opla/newslet.htm

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